

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF
DELAWARE, IN AND FOR NEW CASTLE COUNTY**

COURT NO. 13

WOLANSKI MANAGEMENT

§

Plaintiff Below,

§

Appellee

§

§

VS

§

C.A. No. JP13-18-008807

§

SUSAN CHERUBINI

§

Defendant Below,

§

Appellant

§

APPEARANCES:

Plaintiff, represented by Nicole M. Faries, Esq.

Defendant self-represented.

Sean McCormick, Deputy Chief Magistrate

Peter Burcat, Justice of the Peace

Marie E. Page, Justice of the Peace

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF
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COURT NO. 13

CIVIL ACTION NO: JP13-18-008807

WOLANSKI MANAGEMENT

VS

SUSAN CHERUBINI

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural Posture

The Plaintiff, landlord Wolanski Management (Wolanski), represented by Nicole M. Faries, Esq., filed Civil Action No. JP13-18-008807, on July 30, 2018, in Justice of the Peace Court 13. Wolanski sought delinquent rent and utility payments and possession of the rental unit from the Defendant, tenant Susan Cherubini (Cherubini).

The trial, before a single Justice of the Peace resulted in a Court order dated October 2, 2018, in favor of Wolanski and against Cherubini in the amount of \$5536.31, plus \$38.33 per diem and court costs. Possession was awarded to Wolanski. Cherubini filed an appeal for a trial de novo (TDN) on October 9, 2018. The request was granted; however, the judge below ordered that Cherubini needed to post a \$5750.00 cash bond in order to stay eviction.

A trial *de novo* (TDN) was scheduled for October 22, 2018. Cherubini requested a continuance due to a sick child. The Court granted the continuance, as possession of the unit had been returned to Wolanski, pursuant to a Writ of Possession executed on October 19, 2018. (Cherubini had not posted the required bond to stay eviction.) The TDN was rescheduled for November 16th, before a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Peter Burcat, and Justice of the Peace Marie E. Page. Wolanski appeared, represented by Nicole M. Faries, Esq. Cherubini appeared, self-represented.

The landlord and owner of the property, John Wolanski, did not appear for the TDN. His wife, Kristin Wolanski, was present to testify as to her knowledge of the relevant issues presented at trial. The house is currently up for sale.

Facts

Cherubini moved into the rental unit at 204 Mansion Road, Wilmington on March 1, 2018. Rent was \$1150 per month plus electric and water utilities. Wolanski sent a "Five Day Notice of Delinquent Rent" on July 20, 2018, informing Cherubini that she failed to pay the balance of \$120.00 rent due for May, rent in the amount of \$1150.00 for June and July, and late fees in the amount of \$25.00 per month for May, June, and July, for a total of \$2,495.00 to be paid to cure the delinquency. Wolanski sent an additional "Five Day Notice of Delinquent Rent," on the same day, informing Cherubini that she failed to pay utility charges covering March through the beginning of July for a total of \$991.00, to be paid to cure the delinquency. The amounts for each monthly billing period for electricity and water were separately and specifically delineated.

Cherubini disputed the amount of rent owed and the amount of utilities owed. She testified that she never received copies of the electric bills and that the landlord and owner of the property, John Wolanski (John), had retained sole possession of the garage, the electricity for which was included in every electric bill. She testified that one of the many verbal agreements she and John made was for John to determine what portion of the electric bill he would be responsible for to cover the garage, but he never did.

Cherubini also stated that when she moved in the refrigerator, the stove, and the air conditioning were broken, the unit was very dirty, and there was a mice infestation. She also claimed that, later in her tenancy, black mold became evident. Cherubini claimed that John was to give her a credit on her rent due to conditions of the unit and her personal work cleaning and fixing the issues present, but she did not receive it. Cherubini testified that she always left her rent money in the mailbox in the form of cash and that John, or his brother Albert, would pick the cash up, but never gave her a receipt. She testified that she asked to be able to pay rent by direct deposit, but her request was refused.

Ms. Wolanski presented a "ledger", prepared for trial, of rental payments to the court as evidence of Cherubini's delinquency. This document stated what rent money was received, but was unclear as to the meaning of amounts listed under "Delmarva Power" and "Artesian Water." In addition, Ms. Wolanski testified that she notated the amount of cash for rent received after John told her what was picked up from Cherubini's mailbox. The document reflected a partial payment of rent had been paid in the month of June.

Discussion

Landlord-Tenant relationships are governed by Delaware's Landlord-Tenant Code, found in Title 25, Chapters 51 through 70. A landlord seeking possession of the rental unit may file under §5702. If the reason is for failure to pay rent, a landlord may file under 25 *Del. C.* §5702(2): *The tenant has wrongfully failed to pay the agreed rent.*

Therefore, the landlord may proceed under 25 Del. C. § 5502(a):

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

Rent is not specifically defined in the definition section of the Code at 25 Del. C. § 5141. However, throughout the Code, there are references to what may be considered rent. Utility services may be considered as rent, pursuant to 25 Del. C. § 5312 (e):

Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code.

Payment of utilities is a material term of the contract between Wolanski and Cherubini. Therefore, the landlord may proceed under 25 Del. C. § 5502(a), either with one 5-day letter which delineates the delinquent rent and delinquent utility payments or with a separate 5-day letter for each. Wolanski chose to send separate 5-day letters, although mailed the same day.

The Court reviewed each 5-day letter. The first "Five Day Notice for Delinquent Rent," claimed that Cherubini failed to pay the balance of \$120.00 rent due for May, rent in the amount of \$1150.00 per month for June and July, and late fees in the amount of \$25.00 per month for May, June, and July, for a total of \$2,495.00. As to this notice, the Court finds the following:

- 1) The "ledger" indicates payments made that do not correspond to the amounts listed on the notice. Cherubini admitted that she owes rent money, but only for August, September, and the portion of October prior to her eviction from the unit;
- 2) Ms. Wolanski could only testify as to what her husband told her as to the amount of cash left in the mailbox. Cherubini testified that she left all rent money in the mailbox and either John or Albert picked the cash up. Neither John nor Albert were present to testify to the veracity of the amount of cash Cherubini left in the mailbox. The Court finds that Wolanski's testimony pertaining to what John told her is hearsay. The ledger, therefore, is reflective of this hearsay and thus cannot be considered.

The Court finds that Wolanski cannot satisfy their burden of proof beyond a preponderance of the evidence that Cherubini was delinquent in rent for the amount stated in the 5-day notice. Therefore, the Court finds the notice insufficient and rules in Cherubini's favor in the matter of possession of the unit. Nevertheless, Cherubini admitted to owing rent for the months of August and September and 19 days of October. Therefore, the Court finds for Wolanski in the amount of \$3,028.27.

The next "Five Day Notice for Delinquent Rent" claimed that Cherubini failed to pay \$991.00 in utility bills. The monthly amounts were specifically delineated by type (either electricity or water) and amount of the bill. The Court finds that the amounts pertaining to the water bills were compounded twice in the notice: Wolanski demanded payment for water from March 8, 2018 to April 9th in the amount of \$105.69, then demanded payment for water from April 9th to May 8th in the amount of \$156.76. According to the water bills that Wolanski presented at trial, the amount of \$156.76 included the previous amount, in effect counting the first amount twice. This happened again when Wolanski demanded payment for water from May 8th to June 7th in the amount of \$43.54, then demanded payment for water from June 7th to July 9th in the amount of \$102.66. This second amount also included the previous \$43.54, in effect counting the first amount twice.

Cherubini testified that she never received copies of the electric bills and that she never was told how much would be credited to her for the amount John used in the garage. The Court finds that Wolanski did not provide proof beyond a preponderance of the evidence that Cherubini was ever given a copy of a utility bill in order for her to know what to pay. The Court also finds that the amount demanded on this 5-day notice was inflated. Therefore, the Court rules in Cherubini's favor in the matter of possession of the unit.

Cherubini's unspecified claim for abatement for conditions is denied in its entirety. The lease, signed by both parties, clearly acknowledges receipt of the Landlord/Tenant Code. As such, Cherubini's failure to notify Wolanski pursuant to the Code precludes such a claim.

Conclusion

For the foregoing reasons, the Court finds in favor of Wolanski and against Cherubini, awarding a money judgment for delinquent rent in the amount of \$3,028.27. The Court finds for Cherubini and against Wolanski, awarding possession to Cherubini. Since Cherubini had been dispossessed on October 19, 2018, Wolanski is ordered to restore possession to Cherubini no later than Saturday, November 17th by noon. The panel established that rent for the balance of the month of November would total \$500.00. Ms. Cherubini was advised that failure to remit that amount within five days of the date repossession was ordered could serve as grounds for a new proceeding in which rent and possession could be sought by the landlord. The panel also noted that the terms of the lease will continue to govern the parties' interactions on a month-to-month basis.

NOTE: Cherubini raised a question concerning the disposition of her property upon her eviction, stating that Wolanski put her property openly in the driveway and therefore did not properly store her belongings as required by the Landlord/Tenant Code. The Courts finds that this issue is not ripe for consideration at this time.

Lastly, it should further be noted that the Court receive a post-trial motion from Plaintiff seeking re-consideration of the possession issue, essentially arguing that the five-day letter was sufficient for its purpose on a purely mathematical basis (if one were to add all monies due for the year and subtract all monies paid.) The panel rejected this contention that math alone could rectify the deficiencies that existed regarding the five-day letter at the time of the de novo trial.

The five-day letter was based upon a ledger which was disallowed pursuant to DRE 802. Since there was no other testimony or evidence to support the claim espoused within the five-day letter, the panel affirms its position that the Plaintiff failed to satisfy the burden of proof placed upon them by statute.

IT IS SO ORDERED this 7th day of December, 2018.



A handwritten signature in dark ink, appearing to read "Sean McCormick", written over a horizontal line.

Sean McCormick, Deputy Chief Magistrate
For the Three-Judge Panel